76-1682

IN THE

Supreme Court of the United States

RAYMOND M. HARTMAN,

PETITIONER,

VS.

CATHERINE E. HARTMAN AND
COMMONWEALTH OF PENNSYLVANIA,

RESPONDENTS.

PETITION FOR CERTIORARI

RAYMOND M. HARTMAN
ATTORNEY PRO SE
201 JEFFERSON ST.
ROCHESTER, PA 15074

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IN THE SUPREME COURT OF THE UNITED STATES

RAYMOND M. HARTMAN, PETITIONER

VS.

CATHERINE E. HARTMAN AND
COMMONWEALTH OF PENNSYLVANIA
RESPONDENTS.

To: The Honorable, The Justices of the Supreme Court of the United States.

YOUR PETITIONER, Raymond M. Hartman, having been first duly sworn represents and shows to this Court as follows:

I.

OFFICIAL REPORTS

The decision of the trial Court in Beaver County, Pa. was made and entered on August 9, 1974 and December 16, 1974. It is annexed to this Petition as Exhibit "A". and "A-1"

The decision of the Supreme Court of Pennsylvania is annexed hereto as Exhibit "B". There is no opinion or official reports.

Petition of no date was filed moving the Court to make and enter a written opinion setting forth the basis of its decision was denied on December 29, 1976. "Exhibit C"

Petition for leave to file Petition for reargument nunc pro tunc was filed on January 6, 1977.

Disposition of this Petition was made on March 4, 1977 a copy of which is attached hereto by Exhibit "D"

There is no official report on any thing or decision.

II

The Supreme Court of the United States has jurisdiction of this Petition for a Writ of Certiorari to review a decision of the Supreme Court of Pennsylvania in an action where Petitioner is deprived of his rights to his property without due process of law contrary to the 14th Amendment, U.S. Constitution.

Jurisdiction is confered by Article III, U.S. Constitution and 28 U.S. Code Sec. 1257.

PROCEDURAL HISTORY

1. Sept. 1, 1973, Complaint in Equity filed.
2. July 9, 1974 Amended Answer filed and allowed.
3. April 15, 1974 Motion presented to the Court to dismiss upon the grounds that the Court had no jurisdiction by reason of the fact that this was a suit by a wife against her husband, not in respect to her separate property, and is prohibited by 48 P.S. 111.
This motion to dismiss for total lack of jurisdiction was denied on July 9, 1974.
4. August 9, 1974 Consent decree filed.
5. Sept. 25, 1974 Petition to vacate consent decree filed.
6. December 16, 1974 Petition to vacate consent decree refused.
7. Motion to disqualify Pa. Supreme Court for bias and prejudice, Ignored.
8. Jan. 23, 1975 Notice of Appeal filed.
9. October 8, 1976 Decision of Supreme Court filed affirming decree.
10. Dec. 20, 1976 Petition for Re-Hearing denied.

11. March 4, 1977 Petition for leave to file Petition for reargument nunc pro tunc Denied.

IV

QUESTIONS PRESENTED FOR REVIEW

1. CAN A STATE COURT, ACTING WHOLLY WITHOUT JURISDICTION, DEPRIVE A CITIZEN OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE 14TH AMENDMENT? HELD YES, BY THE PENNSYLVANIA STATE COURTS.

2. IF BIAS AND PREJUDICE IS PRESENT DOES A COURT HAVE POWER TO EXERCISE ITS JURISDICTION. HELD YES BY THE PA. SUPREME COURT.

3. IS THE FAILURE OF A STATE TO PROVIDE A LITIGANT A FAIR TRIBUNAL, BEFORE WHICH TO ADJUDICATE HIS PRIVATE RIGHTS, A VIOLATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT? HELD NO.

V

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED.

1. U. S. Constitutional provisions. Amendment XIV No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
2. Pennsylvania Constitution Article 1 Section 9. "Nor can he be deprived of his life, liberty, or property unless by the judgment of his peers or the law of the land."
3. Pennsylvania Constitution Section 11. All Courts shall be open; and every man for an injury done him in his lands, goods person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such

courts and in such cases as the Legislature may by law direct.
4. Pennsylvania Constitution Section 12. No power of suspending laws shall be exercised unless by the Legislature or by its authority.
5. Pennsylvania Statute 48 P.S. 111 "Hereafter a married woman may sue and be sued civilly, in all respects, and in any form of action, and with the same effect and results and consequences as an unmarried person; BUT SHE MAY NOT SUE HER HUSBAND, EXCEPT IN A SEPARATE PROCEEDING FOR DIVORCE OR IN A PROCEEDING TO PROTECT AND RECOVER HER SEPARATE PROPERTY.

STATEMENT OF THE CASE

Petitioner and Respondent Catherine Hartman have been husband and wife from 1951 right down to date.

On March 28, 1972 Petitioner and wife had in their names 3 pieces of property as tennants in the entireties. All three pieces of property were paid for by Petitioner.

On March 28, 1972 Petitioner deeded all three tracts of the property to wife and these Deeds were recorded on April 11, 1972.

On April 13, 1972 Wife deeded all 3 parcels of property back to Petitioner. Petitioner remained in possession but never did record these deeds until on or about August 16, 1973.

On or about August 2, 1973 Wife moved out to live apart from her husband.

The Complaint alleges that Petitioner and wife are husband and wife, but in no place does it allege that she is suing to recover or protect her separate property. It is admitted that Petitioner paid for this property in addition to financing his wife's college education.

On January of 1975 Petitioner sued the Judges of the Beaver County Courts and the Pa. Supreme Court for a conspiracy to violate the Sherman

Anti-Trust Act in monopolizing the distribution of legal services across state lines and in the State of Pennsylvania; for price fixing; for a violation of civil rights in depriving citizens of the right to speech and petition and for violating the civil rights act. Pennsylvania Bar Association was also included in this suit.

Since that time the U.S. Justice Dept Anti-Trust division has followed suit and sued the American Bar Association and some State Bar Associations for almost the exact complaint that is set out in Petitioner's Anti Trust suit against the Judges of the Supreme Court of Pennsylvania.

The Anti-Trust suit is still pending in the U.S. District Court of Chicago.

Motion was made and filed before Beaver County Judge B. Klein to disqualify himself because of bias and prejudice and he denied this motion.

Motion was made on September 22, 1975 for the Judges of the Supreme Court of Pennsylvania to disqualify themselves by reason of bias and prejudice and that they were Defendants in litigation brought by Petitioner against them. The Supreme Court of Pennsylvania ignored the Motion, Affidavit of Prejudice and all the law quoted in support of the Motion to disqualify themselves.

They sat and heard the appeal and decided the appeal against Petitioner without opinion.

The Motion and affidavit of prejudice against the Judges of the Supreme Court of Pennsylvania is as follows:

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT
SITTING AT PITTSBURGH

CATHERINE E. HARTMAN,
APPELLEE

VS. No. 110 Mar. Term, 1975
IN EQUITY

RAYMOND M. HARTMAN, A/K/A
RAYMOND M. HARTMAN, JR.,
APPELLANT

AFFIDAVIT OF PREJUDICE AND MOTION TO DISQUALIFY

To; Plaintiff above named:

You will please take Notice that Defendant hereby moves the Judges of the above named Court to disqualify themselves because of actual bias and prejudice against Appellant as is shown by the affidavit attached hereto.

The Judges that Appellant moves to enter an order to disqualify themselves are as follows:

Chief Justice Benjamin R. Jones, Justice Michael J. Egan , Justice Samuel J. Roberts, Justice Thomas W. Pomeroy, Jr. Justice Robert N.C. Nix, Jr., and Justice Louis L. Manderino.

You will further take Notice that Appellant hereby moves the Court and the above named Judges to set this Motion for their disqualification down for a hearing upon the merits.

The said Motion is based upon the attached affidavit.

Dated Sept. 22, 1975

Raymond M. Hartman,
In Pro Per

A F F I D A V I T

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BEAVER SS

Raymond M. Hartman, Jr., having been first duly sworn deposes and states that he is Appellant herein.

1. That he is Appellant in the above entitled action and is Regional Counsel for the American Constitutional Rights Protective Association.

2. That the named Judges set forth in the attached motion as follows:

Chief Justice Benjamin R. Jones, Justice Michael J. Egan, Justice Samuel J. Roberts, Justice Thomas W. Pomeroy, Jr., Justice Robert N.C. Nix, Jr., and Justice Louis L. Manderino. are all Defendants in a Federal Civil Rights and Anti-Trust Action filed in the United States District Court for the Western District of Pennsylvania No. CA 75-56. That said action has been commenced by service of process on the Supreme Court Judges of Pennsylvania.

That the said civil action charges the Supreme Court Judges with having entered into a Conspiracy to Monopolize the law business and to restrain commerce in the distribution of legal services across state lines and onto Federal Property and in surpressing competition in the Law business and in dividing up territories and in price fixing generally. The suit also charges the Judges with having entered into the said Conspiracy as members of the American Bar Association and the Pennsylvania State Bar Association and also in engaging into activity and commiting overtacts while separate and apart from their Judicial duties. The Complaint further charges them with having violated 42 U.S. Code Sections 1981, 1983 and 1985 to hinder, obstruct and delay the free exercise of 1st Amendment rights.

This action constitutes a direct attack on the Judges of the Supreme Court of Pennsylvania whereby they have become the target of personal abuse or criticism from the party before the Court, Raymond M. Hartman Jr.

Similarly, the Judges and Lawyers of Beaver, Penna. and the Bar Associations have ganged up as a Class against Appell-

ant because Appellant has questioned their activity and has charged them with a violation of the Sherman Anti Trust Act, 15 U.S. Code Sections 1 thru 28. In other words, these Lawyers and Judges have entered into an agreement to obstruct Justice in every case where Raymond M. Hartman's rights are concerned.

The cases are already decided before any evidence has been taken and before Appellant even enters the Court.

Appellant has good reason to believe, does believe and so states that the same is true in this Court and that Appellant cannot get a fair trial in this Court because of bias and prejudice on the part of the Judges of the Supreme Court of Pennsylvania.

Raymond M. Hartman, Jr.

Sworn to and subscribed before
me this 22nd day of Sept., 1975

To date the Supreme Court of Pennsylvania has ignored this Motion for disqualification.

ARGUMENT

1. If a statute of the State of Pa. prohibits a wife from suing her husband, can the court acting wholly without jurisdiction deprive the appellant of his property without due process of law, in violation of the 14th amendment. The Pa. Courts held yes.

It is admitted by all that this is not the separate property of the wife in this case. The claim that it is property held by a tennancy in the entireties or jointly and that the wife conveyed by fraud or mistake is admitted by the wife. Petitioner paid for the property. She definitly has not sued to recover her separate property.

Therefore under the common law and the law of Pennsylvania the wife cannot sue her husband and the court has no jurisdiction.

The 14th Amendment prohibits any State from depriving any person of his property without due process of law. At Common Law a wife could not sue her husband. Pennsylvania Statutes 48 P.S. 111 is clear:

"A married woman may sue and be sued civilly, --- BUT SHE MAY NOT SUE HER HUSBAND, EXCEPT IN A SEPARATE PROCEEDING FOR DIVORCE, OR IN A PROCEEDING TO PROTECT AND RECOVER HER SEPARATE PROPERTY."

The Court has no jurisdiction to proceed in a suit by one spouse against the other to enforce his or her rights to a tennancy by the entireties. See Brobst vs. Brobst 121 A2d 178, 384 Pa. 530.

Since the Pennsylvania Courts had no jurisdiction, the decree must be set aside and reversed.

2 & 3. WHERE BIAS IS PRESENT THE COURT DOES NOT HAVE POWER TO EXERCISE ITS JURISDICTION AND IT IS A VIOLATION OF THE DUE PROCESS OF LAW CLAUSE OF THE 14th AMENDMENT FOR A STATE TO FAIL TO PROVIDE A LITIGANT A FAIR TRIBUNAL BEFORE WHICH TO ADJUDICATE HIS PRIVATE RIGHTS.

There is no doubt, the affidavit of prejudice filed by Petitioner stands admitted in the record.

The Court of Pennsylvania just chose to ignore it.

Since the lawyers in the U.S. Justice Dept. are a part of the conspiracy to violate the Sherman Anti Trust Act, the only way that the conspiracy of the Bench and Bar can be brought to justice is by a suit brought by citizens not a part of the Bench and Bar.

Petitioner is Regional Counsel for the American Constitutional Rights Protective Association.

The organized bench and bar in Pennsylvania have ganged up on Petitioner in every case where his rights are concerned because Petitioner has questioned their criminal activity. They have entered into an agreement to obstruct Justice in every case where Petitioner's rights are concerned.

These Judges are disqualified; See Withrow v. Larkin 43 L.W. 4459 where the U.S. Supreme Court stated on April 16, 1975 as follows:

Concededly, a "fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136 (1955). This applies to administrative agencies which adjudicate as well as to courts. Gibson vs. Berryhill, 411, U.S. 564, 579, (1973). Not only is a biased decisionmaker constitutionally unacceptable but "our system of law has always endeavored to prevent even the probability of unfairness. "Murchison, supra; ef. Tumey vs. Ohio, 273 U.S. 510, 532 (1927). In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary interest in the outcome and in which he has been the target of personal abuse or criticism from the party before him.

See also Oakley v. Aspinwall, 3 N.Y. 547 where it is quoted;

The first idea in the administration of justice is that a judge must necessarily be free from all bias and partiality He can not be both judge and party, arbiter and advocate in the same cause.

Mankind are so agreed in this principle, that any departure from it shocks their common sense and sentiment of justice.

It was long ago reported, on the authority of Holt, that the mayor of Hertford was laid by the heels for sitting in judgment in a cause when he himself was lessor of the plaintiff in ejectment, although he, by the charter, was sole judge of the court (1 Salk. 396). No information has reached us at this day tending to show that the treatment which the mayor received on this occasion was deemed too severe by his contempotaries, although his apology, to wit-that he was sole judge of the court-has been held by some modern judges to excuse them for determining upon matters and causes in which their relations were parties or were interested <u>But it seems to me far better that causes as to which the sole judge of a court is presumed to be biased in favor of one of the parties should remain undetermined until the legislature should provide an appropriate tribunal for their decision, than that the principle which demands complete impartiality in a judge should ever be violated. The urgency of a particular case is not so much to be regarded as the elevation and honor of courts of justice, whose dignity and purity constitute a main pillar of the state.</u>

It is therefore a proposition, to plain to be disputed, that no Judge should sit and hear or determine a matter where his impartiality is questioned.

Furthermore, the Pennsylvania Constitution Art. I Sec. 11 provides:

"Every man---for an injury done him in his lands, goods, person and reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

Justice was denied in this case.

CONCLUSION

As is shown above, the Courts of Pennsylvania had no jurisdiction to entertain a suit by the Wife against Petitioner, husband at all. The Court of Common Pleas of Pennsylvania had no jurisdiction to enter any judgment at all. Jurisdiction is prohibited by Pennsylvania statute 48 P.S. 111. It is a denial of due process of law in violation of the 14th Amendment to the United States Constitution.

Further it was error for the trial judge of the Court of Common Pleas as well as the Justices of the Supreme Court of Pennsylvania to fail to disqualify themselves for actual bias and prejudice. There is no question, they would be disqualified if sitting as jurors. Therefore, they are disqualified from sitting as judges.

WHEREFORE, your Petitioner prays that a WRIT OF CERTIORARI ISSUE FROM THIS COURT directed to the Supreme Court of Pennsylvania and to the Court of Common Pleas of Beaver, County, Pennsylvania commanding that the record be certified up to the end that the Judgment of the Courts of Pennsylvania be reversed and that the Pennsylvania Courts be directed to dismiss the action for lack of jurisdiction, or in the alternative, a new trial granted.

Subscribed and sworn to before
me this 2nd January
_____

Raymond M. Hartman

Raymond M. Hartman,
Pro Se
201 Jefferson St.
Roch., Pa. 15074

Exhibit "A"

Memorandum

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY PENNSYLVANIA

CIVIL DIVISION

Catherine E. Hartman,
Plaintiff

(Filed Aug. 9, 1974)
vs. No. 1363 of 1973
In Equity

Raymond M. Hartman, a/k/a/
Raymond M. Hartman, Jr.,
Defendant

MEMORANDUM

Klein, J. Aug. 9, 1974

The above-captioned case came on for trial at 9:30 a.m., August 8, 1974. At that time, the parties, through counsel, advised the Chancellor that serious negotiations aimed at an amicable settlement of this matter, together with settlement of other litigation and other matters in controversy between the parties, husband and wife, were in progress. A recess was declared and ample time granted to conclude the settlement. Such a settlement agreement was reached, reduced to a Stipulation in writing, attached hereto, marked Exhibit "A" and made part hereof. Accordingly, and after conference with counsel, we enter the following

CONSENT DECREE

AND NOW, August 9, 1974, it is ordered and decreed:

1. That the parties will effect a deed or deeds conveying the herein three parcels, referred to as the Adams Street Property, the Jefferson Street Property and the Brighton Township Property, in such manner as to re-create a tenancy by the entireties in the parties of said parcels, SUBJECT, however, to an allocation of $7,500.00 (to the husband-defendant on account of a gift of like amount made by defendant's mother)

upon the future disposition of the Adams Street Property; and

2. That no accounting by the defendant be required for rentals received or accrued from the time of the herein contested transfers until August 8, 1974; and

3. That defendant-husband will make all mortgage payments due on the Brighton Township Property which he occupies; and

4. That defendant provide plaintiff with a strict accounting of all rentals received on and after August 9, 1974 and that same be divided equally between the parties; and

5. That the action in trespass filed by herein defendant at No. 4 of 1974 against David Rosenlieb be discontinued by the herein defendant; and

6. That the herein defendant be forever enjoined from harassing the herein plaintiff in any way by his own acts or those of his agents, servants or associates; and

7. That each of the parties are free to live their separate, individual lives in accordance with each's wishes, conscience, etc.; and

8. (a) That defendant will, commencing August 1, 1974 pay the sum of $200.00 per month for the support of the parties two minor children, with whom defendant shall have reasonable visitation rights; and

(b) That defendant will pay $500.00 to plaintiff forthwith on account of the agreed upon $250.00 per month support, and that thereupon the balance of current arrearages will be abated; and

(c) That neither party will seek a modification of this support order for at least one year from date hereof.

BY THE COURT

H. Beryl Klein
J

Exhibit "A-1"

OPINION

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY PENNSYLVANIA

CIVIL DIVISION

Catherine E. Hartman,
Plaintiff,

vs. (Filed December 16, 1974)
No. 1363 of 1973
Raymond M. Hartman, a/k/a/ Raymond M. Hartman, Jr., In Equity
Defendants.

OPINION

Klein, J. December 16, 1974

HISTORY

September 1, 1973 Complaint in Equity filed seeking rescission of 3 deeds conveying a sole interest in various parcels of real estate to defendant-husband from plaintiff-wife and other incidental relief.

September 21, 1973 Praecipe for Default Judgment

September 25, 1973 Answer to Complaint filed

October 3, 1973 Certificate of Readiness for Trial to aid in Decree filed by plaintiff.

November 21, 1973 Trial set for January 22, 1974, later continued to February 19, 1974.

Although represented by counsel of record who had prepared the Answer filed, defendant, pro se, filed Amendmed Answers on January 29, 1974 and February 7, 1974, the net effect of which under Rules of Court was to admit the essential allegations of the Complaint by averring a general denial.

On February 12, 1974, plaintiff filed a Motion for Judgment on the Pleadings.

On March 1, 1973, defendant, via counsel, filed a Motion for Judgment on the Pleadings.

On March 12, 1974, the defendant, pro se, filed a "Motion to Strike Amended Answers in Equity Erroneously Filed in Pro Per Pursuant to Local Rule 1.20" and a "Motion to Dismiss Complaint in Equity".

On March 12, 1974, defendant filed a "Notice of Discharge of Attorney of Record and Motion to Proceed in Propria Persona".

On March 12, 1974, plaintiff filed a "Motion to Strike" said defendant's Motion for Judgment on the Pleadings".

On March 22, 1974, defendant filed another motion to dismiss the complaint - pro se.

On March 25, 1974, in addition to filing a brief for defendant, new counsel of record presented a "Petition for Leave to Amend Pleadings".

On March 29, 1974, defendant's original counsel of record petitioned to withdraw his appearance. Petition granted.

On July 9, 1974, after argument, this Court entered an Order which was as follows

> "AND NOW, July 9, 1974, it is ordered adjudged and decreed that plaintiff's motion for judgment on the pleadings be, and it is hereby refused; and that defendant's motion for judgment on the pleadings be, and it is hereby, dismissed; and that defendant's "motion to dismiss" plaintiff's Complaint be, and it is hereby, refused; and that defendant is granted leave to file the Amended Answer attached to said Petition and the Prothonotary is directed to file and docket same herewith; and that trial on the merits before the undersigned Chancellor is set for Thursday, August 8, 1974 at 9:30 o'clock A.M., in Court Room No. 3."

At the time set for hearing, August 8, 1974 at (9:30 A.M. counsel advised the Court that they had been discussing an amicable settlement of the instant litigation, together with settlement of other related litigation, disputes and controversies between the parties and requested 15 minutes to finalize same. The request was granted and at the expiration of the 15 minute period, additional time was sought to effect an agreement. The Court granted an additional 30 minutes and later, upon request, counsel was advised to take whatever additional time was required so long as good faith negotiations were ongoing and progress being made.

Shortly before noon, after more than two hours of negotiation, counsel advised the Chancellor that an agreement had been reached.

The Chancellor advised counsel that he required that (1) the agreement be reduced to writing forthwith, in triplicate, in 1, 2, 3, etc. form; (2) reviewed by each of the parties in consultation with respective counsel; and (3) signed by the parties with respective counsel attesting to the signature of each. This was done.

On the following day, August 9, 1974, pursuant to an agreement with the parties and counsel, the Chancellor embodied the terms of the Agreement in a Consent Decree, to which the original Stipulation in writing was attached, marked as an Exhibit and made part thereof.

On September 25, 1974, forty-seven days later, the defendant presented a "Petition to Vacate, Strike Off, Set Aside or Open Judgment". namely referring to the consent Decree of August 9. The Plaintiff filed an Answer to said Petition and the matter came on for hearing on November 26, 1974.

FROM the testimony, we make the following

FINDINGS OF FACT

1. On the morning of August 8, 1974, the defendant, Raymond M. Hartman, was fully conscious, in full possession of his faculties, able to comprehend thought expressed to him and express himself, and fully capable and competent to enter into an agreement affecting his personal and property rights and responsibilities.

2. At said time, said defendant was properly oriented to time, place and substance of discussions in which he participated.

3. At said time, defendant was represented by experienced legal counsel.

4. At said time, defendant was also accompanied by a loyal and devoted sister and several loyal and devoted friends.

5. On the morning of August 8, 1974, the defendant drove his car from his office in Rochester to the vicinity of the Court House in Beaver.

6. The defendant engaged in the practice of his profession, optometry, on August 7, August 8 and August 9, 1974.

7. The agreement reached between the parties is fair to both.

8. The parties are husband and wife.

DISCUSSION

The defendant seeks to have the Consent Decree set aside because he was suffering from "automatism" on the morning of August 8, 1974 - a condition in which one "walks about and performs acts mechanically and without consciousness of what he is doing". We find no credible evidence to sustain such a proposition.

The defendant called two expert witnesses to substantiate the claim, a psychologist and a physician. We cannot accept the opinion of either because they are based upon assumed material facts which we find are not established by the evidence.

Among other things, the expert witnesses testified that stressful situations were likely to make the defendant withdrawn

docile, etc. So much as a mere reading of the cold transcript of the instant hearing will reveal that in this stressful situation defendant was out-going, vocal and indeed, belligerent - both toward his wife and the Court.

There was a suggestion that the defendant took a large overdose of medication that morning. Although he may have taken more than a normal dosage the testimony was incredible as to the amount taken Interestingly, the psychologist testified that the dosage recommended by the physician was "too small" in his opinion.

Most conclusively, however, is the fact that it is totally incomprehensible that an experienced lawyer could be engaged for more than two hours in the type of back and forth negotiations required here - discussing proposals and counter-proposals - without discerning that his client was not himself. It is also unworthy of belief that a loyal and devoted sister and devoted friends would permit such negotiations to continue without so much as mentioning defendant's "Condition" to counsel - a condition which they now say they readily observed.

Finally, the agreement reached was fair to both parties. The plaintiff-wife agreed to allocate $7,500.00 to the defendant-husband upon future disposition of one of the parcels of real estate, on account of a gift previously made to them by defendant's mother. Although the sister testified that she was in a mood of "sign anything- let's get this over with", she also testified that she suggested the proposal concerning the $7,500.00. In addition, plaintiff accepted defendant's proposal that he not be required to account for rentals received from April, 1972 until August 8, 1974, another substantial concession.

One who files pro-se "pleadings" while represented by counsel of record, expecially where their contents consist of those instantly; and conducts himself in open court as did defendant (most of which cannot be reflected in a cold record) may well qualify for the appellation "eccentric as that term is defined by Webster -

> "deviating from the norm, as in conduct; whimsical, unconventional."

- but that does not make him unable to manage his own affairs, nor lacking in capacity to enter into a binding agreement.

CONCLUSION

At two stages of these proceedings the plaintiff had (1) a default judgment and (2) was lawfully entitled to a judgment on the pleadings in accordance with a strict interpretation of the applicable Rules of Civil Procedure. Nevertheless, this Court of Equity determined that the matter should be adjudicated on its merits and scheduled a trial for said purpose, in the interests of fundamental fairness, justice and equity.

At the time set for hearing, the parties were involved in discussions aimed at an amicable settlement of all disputes between them and proceeded to reach a comprehensive agreement.

The law, of course, favors the amicable settlement of disputes - including those between "strangers". When the parties are husband and wife, such agreements are all the more favored - expecially between a husband and wife who lived together for nearly twenty years.

As is set forth in P.L.E., Equity, §166

"One who seeks to have a decree vacated has the burden of establishing his case by clear and satisfactory evidence".

The defendant's evidence is neither clear nor satisfactory.

As a contract, the Court, in the absence of fraud, accident or mistake, has neither the power nor the authority to modify or vary the terms of a consent decree. Universal Builders Supply, Inc. v Shaler Highlands Corp. 405 Pa. 259 (1961) Jones Memorial Baptist Church v. Brackeen, 416 Pa. 599 (1965); and Comm. by Creamer v Rozman, 10 Pa. Commonwealth Ct. 133 (1973). In the instant proceedings, defendant did not seek any modification of the decree nor could he. There was not the slightest suggestion of any fraud, accident or mistake.

For all these reasons, we make the following

O R D E R

AND NOW, December 16, 1974, it is ordered, adjudged and decreed that defendant's Petition to Vacate the Consent Decree of August 9, 1974, be and it is hereby, refused.

The parties shall proceed, forthwith, to comply with said Decree.

The costs of these proceedings shall be paid by defendant.

By the Court

_____
H. Beryl Klein
J.

Exhibit "B"

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CAHTERINE E. HARTMAN,
APPELLEE

V. No. 110 March Term, 1975

RAYMOND M. HARTMAN, a/k/a/
RAYMOND M. HARTMAN, JR.,
APPELLANT

Appeal from the Decree dated December 16, 1974, of the Court of Common Pleas of Beaver County, Pennsylvania, in Equity at No. 1363 of 1973
Filed: October 8, 1976

OPINION OF THE COURT

PER CURIAM:

Decree affirmed. Costs on the appellant

Exhibit "C"

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

801 City-County Building
Sally Mrvos, Pittsburgh, Pa.
Prothonotary 15219
Irma T. Gardner,
Deputy Pro. December 29, 1976
Mr. Raymond M. Hartman
201 Jefferson Street
Rochester, Pa. 15074

In Re: Catherine E. Hartman v. Raymond M. Hartman, a/k/a/ Raymond M. Hartman, Jr., Appellant No. 110 March Term, 1975

Dear Mr. Hartman:

The Court has entered the following Order on your Petition for The Court to Reduce its Per Curiam Order Entered on the 8th Day of October, 1976, etc.:

"12-20-76

Petition denied.
Per Curiam"

Very truly yours,
(Sally Mrvos)
PROTHONOTARY

SM: ban
cc: James M. Keller, Esquire
734 Park Ave. Ellwood City
J. Frank Kelker, Esquire
232 Adams St. Roch., Pa.

Exhibit "D"

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Sally Mrvos, Prothonotary
Irma T. Gardner, Deputy Prothonotary
801 City-County Building,
Pittsburgh, Pa. 15219

March 9, 1977

Mr. Raymond M. Hartman
201 Jefferson Street
Rochester, Pa. 15074

In Re: Catherine E. Hartman v. Raymond M. Hartman, a/k/a Raymond M. Hartman, Jr., Appellant No. 110 March Term, 1975

Dear Mr. Hartman:

The Court has entered the following Order on your Petition for Leave to File Petition for Reargument Nunc Pro Tunc:

"3-4-77

Petition denied.
Per Curiam"

Very truly yours,

(Sally Murvos)
Prothonotary

SM; ban
cc: James M. Keller, Esquire
734 Park Ave.
Ellwood City, Pa. 16117

Maurice S. Moe, Esquire
West Publishing Company
St. Paul, Minnesota 55102

J. Frank Kelker, Esquire
232 Adams Street
Rochester, Pa. 15074

Francis X. Diebold, Esquire
State Reporter - Superior Court
Seven Penn Center Plaza, 4th Fl
Philadelphia, Pa. 19103